

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT GILL,

Plaintiff,

-against-

MCMILLAN & ANDREWS, LLC,

Defendant.

**VERIFIED COMPLAINT and DEMAND
FOR JURY TRIAL**

NOW COMES Plaintiff, Robert Gill ("Plaintiff"), by and through his attorneys, Krohn & Moss, Ltd., for his Verified Complaint against Defendant, McMillan & Andrews, LLC ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

Parties

2. Plaintiff is a natural person residing in Cambridge, Massachusetts.
3. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).
4. Defendant is a limited liability company having its principal place of business located in Lockport, New York.
5. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

Jurisdiction and Venue

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

8. Because Defendant conducts business and is principally located in the state of New York, personal jurisdiction is established

9. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

10. Declaratory relief is available pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 2202.

Factual Allegations

11. Defendant placed collection calls to Plaintiff seeking and demanding immediate payment for an alleged consumer debt.

12. Plaintiff denies owing the alleged debt.

13. Defendant placed approximately eight (8) collection calls to Plaintiff everyday.

14. Defendant placed collection calls to Plaintiff every thirty (30) minutes.

15. Defendant placed collection calls to Plaintiff from telephone area code 716.

CLAIM FOR RELIEF

16. Defendant’s violations of the FDCPA include, but are not limited to, the following:

- a. Defendant violated §1692c(a)(1) of the FDCPA by contacting Plaintiff at a time and place known to be inconvenient;

- b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person;
 - c. Defendant violated §1692d(5) of the FDCPA by causing the telephone to ring or engaged any person in telephone conversations repeatedly;
 - d. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of an alleged debt;
 - e. Defendant violated §1692e(2) of the FDCPA by misrepresenting the character, amount, or legal status of the alleged debt;
 - f. Defendant violated §1692f of the FDCPA by engaging in unfair and unconscionable means to collect or attempt to collect an alleged debt; and
 - g. Defendant violated §1692f(1) of the FDCPA by attempting to collect any amount not authorized by the agreement creating the debt or permitted by law.
17. Plaintiff is entitled to his attorney's fees and costs incurred in this action.
18. This case presents an actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 2202.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*;
- (2) Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k;
- (3) Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and
- (4) Awarding such other and further relief as may be just, proper and equitable.

Dated: May 26, 2010

KROHN & MOSS, LTD.

By: 

Adam T. Hill

KROHN & MOSS, LTD.

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Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Robert Gill, hereby demands a jury trial in this matter.

VERIFICATION

STATE OF MASSACHUSETTS)

SS.:

COUNTY OF MIDDLESEX)

Plaintiff, Robert Gill, being duly sworn, deposes and says:

1. I am the Plaintiff in this civil proceeding;
2. I have read the foregoing Verified Complaint prepared by my attorneys and I believe that all of the facts contained therein are true and correct, to the best of my knowledge, and formed after reasonable inquiry;
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law;
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it;

Pursuant to 28 U.S.C. § 1746(2), I, Robert Gill, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: May 19, 2010


Robert Gill